



## **AHPRA AND CRIMINAL HISTORY**

*This document is prepared for students at Dental Schools in Queensland in relation to their responsibilities for declaration about criminal history and they should be aware of these responsibilities, and if in doubt, contact an appropriate legal practitioner or the Dental Association in each State.*

### **Introduction**

AHPRA, on behalf of the National Boards, must check the criminal history of an applicant<sup>1</sup> for general (non-student) registration during the registration process, to ensure that only those practitioners who are suitable and safe to practice are granted registration in Australia.<sup>2</sup>

When a practitioner first applies for registration, the National Board requires the applicant to declare their criminal history in all countries, including Australia.

Once registered, all practitioners have an ongoing duty to inform the National Board of their Criminal History, or changes to their criminal history.

Under the National Law, a National Board may obtain and report about a registered health practitioner's criminal history at any time.

AHPRA's ability to check a criminal history is not simply a police history, pursuant to the section 79 of the *Health Practitioner Regulation National Law Act 2009* (Qld) at subsection 2, for the purposes of checking an applicant's criminal history, a National Board may obtain a written report about the criminal history of the applicant from any of the following:

- (a) CrimTrac;
- (b) A police commissioner;
- (c) An entity in a jurisdiction outside Australia that has access to records about the criminal history of persons in that jurisdiction.

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<sup>1</sup> For General Registration. This does not apply to student registration presently, as the students are registered by the University.

<sup>2</sup> [Ahpra.gov.au/registration/registration-process/criminal-history-checks.aspx](http://ahpra.gov.au/registration/registration-process/criminal-history-checks.aspx) accessed 20<sup>th</sup> of June 2016 at 8.00am.

Potential registrants need to be aware, and also registrants need to be aware, that they are obliged to reveal whether they comply with the criminal history registration standard, which is that published on the 1<sup>st</sup> of July 2015<sup>3</sup>.

A criminal history is defined on page 3 of that document as:

- ***every conviction of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law.***

Practically, that means that if a person has been convicted of an offence, whether or not a conviction is recorded, then this needs to be disclosed as a criminal history event.

Secondly:

- ***every plea of guilty or finding of guilt by a court of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law and whether or not a conviction is recorded for the offence.***

Thirdly, most importantly and frequently overlooked:

- ***every charge made against the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law.***

Spent convictions (which means that in most jurisdictions after a period of 10 years, convictions are no longer live) still need to be declared.

There are ten (10) points that are relevant as to how the Board will consider the criminal history, and these are listed at pages 2 and 3 of the Registration Standard.

It is important to realise that the **disclosure of the history as a matter of candour and professionalism is more important** in most cases than the actual conviction, certainly in minor cases.

Criminal history is defined at section 5 on page 61 of the National Law presently.

This is reflected in the policy which has been provided.

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<sup>3</sup> (attached to this fact sheet at pages 3-5)



Aboriginal and Torres Strait  
Islander Health Practice  
Chinese Medicine  
Chiropractic  
Dental  
Medical  
Medical Radiation Practice  
Nursing and Midwifery  
Occupational Therapy  
Optometry  
Osteopathy  
Pharmacy  
Physiotherapy  
Podiatry  
Psychology

Australian Health Practitioner Regulation Agency

For registered health practitioners

# REGISTRATION STANDARD: CRIMINAL HISTORY

1 July 2015

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## Summary

This registration standard sets out the factors the National Board will consider in deciding whether a health practitioner's criminal history is relevant to the practice of their profession under the Health Practitioner Regulation National Law as in force in each state and territory (the National Law). While every case will need to be decided on an individual basis, these 10 factors provide the basis for the Board's consideration.

## Does this standard apply to me?

This standard applies to all applicants for registration and all registered health practitioners. It does not apply to students.

## Requirements

In deciding whether a health practitioner's criminal history is relevant to the practice of their profession, the Board will consider the following factors.

### 1. The nature and gravity of the offence or alleged offence and its relevance to health practice.

The more serious the offence or alleged offence and the greater its relevance to health practice, the more weight that the Board will assign to it.

### 2. The period of time since the health practitioner committed, or allegedly committed, the offence.

The Board will generally place greater weight on more recent offences.

### 3. Whether a finding of guilt or a conviction was recorded for the offence or a charge for the offence is still pending.

In considering the relevance of the criminal history information, the Board is to have regard to the type of criminal history information provided. The following types of criminal history information are to be considered, in descending order of relevance:

- a) convictions
- b) findings of guilt
- c) pending charges
- d) non conviction charges; that is, charges that have been resolved otherwise than by a conviction or finding of guilt, taking into account the availability and source of contextual information which may explain why a non-conviction charge did not result in a conviction or finding of guilt.

### 4. The sentence imposed for the offence.

The weight the Board will place on the sentence will generally increase as the significance of the sentence increases, including any custodial period imposed. The Board will also consider any mitigating factors raised in sentencing, where available, including rehabilitation.

### 5. The ages of the health practitioner and of any victim at the time the health practitioner committed, or allegedly committed, the offence.

The Board may place less weight on offences committed when the applicant is younger, and particularly under 18 years of age. The Board may place more weight on offences involving victims under 18 years of age or other vulnerable persons.

### 6. Whether or not the conduct that constituted the offence or to which the charge relates has been decriminalised since the health practitioner committed, or allegedly committed, the offence.

The Board will generally place less or no weight on offences that have been decriminalised since the health practitioner committed, or allegedly committed, the offence.

### 7. The health practitioner's behaviour since he or she committed, or allegedly committed, the offence.

Indications that the offence was an aberration and evidence of good conduct or rehabilitation since the commission, or alleged commission of the offence, will tend to be a mitigating factor. However, indications that the offence is part of a pattern of behaviour will tend to have the opposite effect.

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## 8. The likelihood of future threat to a patient of the health practitioner.

The Board is likely to place significant weight on the likelihood of future threat to a patient or client of the health practitioner.

## 9. Any information given by the health practitioner.

Any information provided by the health practitioner such as an explanation or mitigating factors will be reviewed by the Board and taken into account in considering the health practitioner's criminal history.

## 10. Any other matter that the Board considers relevant.

The Board may take into account any other matter that it considers relevant to the application or notification. A Board will not require an applicant or registered health practitioner to provide further information that may prejudice their personal situation pending charges and the Board must not draw any adverse inference as a result of the fact that information has not been provided.

**Note:** the above factors have been numbered for ease of reference only. The numbering does not indicate a priority order of application.

## Review

**Last reviewed:** 1 July 2015

This standard will be reviewed at least every three years.

## Authority

This registration standard was approved by the Australian Health Workforce Ministerial Council on 17 March 2015.

Registration standards are developed under section 38 of the **National Law** and are subject to wide ranging consultation.

## Definitions

**National Law** means the Health Practitioner Regulation National Law (as in force in each state and territory).

**Criminal history** is defined in the National Law as:

- every conviction of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law;
- every plea of guilty or finding of guilt by a court of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law and whether or not a conviction is recorded for the offence;
- every charge made against the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law.

Under the National Law, spent convictions legislation does not apply to criminal history disclosure requirements. This means that when making a declaration about criminal history, applicants and registered health practitioners must declare their entire criminal history, from Australia and any other country, including any spent convictions.